

Notice of Allowability

Application No.

10/789,659

Examiner

Gay Ann Spahn

Applicant(s)

WYBRO ET AL.

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 05 December 2005.
2. ☒ The allowed claim(s) is/are 1-3,6-12 and 14-26.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 24 November 2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S COMMENTS

Third-Party Submission in Published Application Under 37 C.F.R. § 1.99

The information disclosure statement (IDS) submitted on 24 November 2005 by a third party is in compliance with the provisions of 37 CFR 1.99 and 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

However, Item C3 under the heading of "Other Art" has been lined through as not being considered by the examiner because not enough information has been presented for the examiner to determine if the submission constitutes a "printed publication." The third-party submitter stated that Item c3 was "a CD-ROM labeled 'Marine Construction 2003 - Emerging Technology for TLP Installations 14 Feb 2003' which contains a Microsoft PowerPoint presentation containing a computer animation segment which was part of a presentation made by Mr. Dwayne Breau on February 20, 2003, at the Marine Construction 2003 & Risk Forum held in Houston, Texas." The third-party submitter argued that "this reference is a 'printed publication' under 35 U.S.C. 102(b) per the decision in *In re Klopfenstein*, 2004 U.S. App. LEXIS 17151 (Fed. Cir. 2004) because it was made directly to those whose interests make them likely to observe and remember whatever it may contain that is new and useful."

However, as the examiner reads *In re Klopfenstein*, this is only one of the factors taken into consideration in determining whether something constitutes a "printed publication." What appears to be most important in *In re Klopfenstein* is the duration of

Art Unit: 3673

the display. In *In re Klopfenstein*, slides were printed onto a board and displayed continuously for several days at a seminar.

In the present case, the examiner has no idea whether the "computer animation" was only shown once or whether there was a booth at the seminar which had a computer monitor or television continuously displaying the "computer animation" throughout the day. Without more information, the examiner cannot determine if Item c3 on the Third-Party Submission Under 37 CFR § 1.99 constituted a "printed publication" and therefore, the reference has been lined through as not being considered.

Allowable Subject Matter

Claims 1-3, 6-12, and 14-26 are allowed.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571)-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gay Ann Spahn, Patent Examiner
December 21, 2005



MICHAEL SAPA
PRIMARY EXAMINER
ART UNIT 3673